IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 5424 of 2005

Between:

K.Jaya Prakash Rao, S/o.Late K.Krishna Swamy,
R/o.B-29 RTC Colony, Madhurawada, Visakhapatnam District.

..... PETITIONER

AND

1. The Vice Chairman and Managing Director Girijana Cooperation Limited, Visakhapatnam.
2. The A.P.S.R.T.C. rep by its Vice Chairman and Managing Director Musheerabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased toissue a writ, order or direction more particularly one in the nature of writ of Certiorari calling for the records on the file of the 1st respondent vide Rc.No.606/04 Admn.1 dt.8.2.2005 and quash or set the same and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.KUNA NARASIMHA RAO

Counsel for the Respondent No.1 : NONE APPEARED.

Counsel for the Respondent No.2 : KUM.B.G.UMA DEVI

The Court made the following :

THE HONOURABLE SRI JUSTICE

C.V.RAMULU

W.P.No.5424 of 2005

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ORDER:

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This writ petition is filed seeking Certiorari to call for the records on the file of the 1st respondent vide R.C.No.606/04 Admn.1 dated 8-2-2005 and quash the same as arbitrary and illegal.

The petitioner while working as Depot Manager in APSRTC was deputed to the Girijana Co-operative Corporation Limited, Visakhapatnam as Transport Officer. While, working in Girijana Co-operative Corporation Limited, Visakhapatnam A.C.B laid a trap on 31-1-2005, wherein the petitioner was caught hold of while accepting illegal gratification of Rs.3,000/- from one Mr.K.Venkata Chalapathi Rao, s/o Late

Veerunaidu, proprietor of M/s. K.Veerunaidu & Sons Auto Mechanical Works, Anakapalli. Thereafter, the petitioner was arrested on 31-1-2005 at 22.00 hours and sent for remand. Further in view of his arrest and remand, he was kept under suspension through the impugned proceedings, after the matter was being informed to the APSRTC and ratified by them.

It is the contention of the petitioner that 1st respondent has no power whatsoever to suspend the petitioner from service. Further, there is no evidence to show that the petitioner was arrested and kept in the custody for more than 48 hours to invoke Clause (2) of Regulation 18 of the APSRTC Employees' (CC&A) Regulations, 1967. Even though the petitioner requested to repatriate him to his parent department, respondent No.2, he was not repatriated and the suspension order is passed without any jurisdiction and therefore the same is arbitrary and illegal.

A detailed counter has been filed by the respondents denying the allegations made by the petitioner, *inter alia* asserting that APSRTC is a public sector undertaking fully controlled by the Government of Andhra Pradesh and the instructions issued vide Circular Memo No.36761/SERC/2004 dated 12-3-2004 with regard to dealing of cases connected with A.C.B are applicable to the petitioner. According to Claus (2) of Regulation 18 of the APSRTC Employees' (CC&A) Regulation, 1967, an employee detained in custody, whether on a criminal charge or otherwise for a period exceeding 48 hours shall be deemed to have been suspended with effect from the date of detention, by an order of the appointing authority, and shall remain under suspension until further orders. Further as per Regulation 31 of APSRTC Employees' (CC&A) Regulations, 1967, where the services of an employee to be punished have been lent to an outside authority, the power to impose any of the penalties specified in Clause (1) of Regulation 8, in respect of matters arising during such outside employment, shall lie only with the authority competent to impose such a penalty on the employee under these regulations. The borrowing authority shall in such a case complete the enquiry, revert the employee concerned to the services of the Corporation (if it is considered necessary to do so) and forward all the papers of the enquiry for such action as the appropriate authority may consider necessary. Provided that the borrowing authority shall forthwith inform the Corporation the circumstances leading to the order of his suspension or the commencement of the disciplinary proceedings against him, as the case may be.

I have given my earnest consideration to the respective submissions made by the leaned counsel on either side, and perused the material made available on record.

At the outset, I am of the opinion that the impugned order does not suffer from any infirmity requiring interference of this Court under Article 226 of the Constitution of India. Neither there is any arbitrariness or illegality committed by any of the authorities. Admittedly, the petitioner was on deputation with the 1st respondent and while he was on deputation he was trapped by A.C.B and further he was also arrested and was in custody. Therefore, while invoking the Claus (2) of Regulation 18 of the APSRTC Employees' (CC&A) Regulations, 1967, the petitioner was placed under suspension after taking permission from the competent authority, 2nd respondent herein. Further, under Regulation 31 of the APSRTC Employees' (CC&A) Regulations, 1967 when the services of the employee is lent, with the permission of the competent authority, the authority to which the petitioner was deputed can take appropriate action of conducting an enquiry into the misconduct as per the Regulations of the APSRTC and send the entire record to the 2nd respondent for further action. In this case, admittedly such a stage has not yet come. The challenge made is to the suspension order passed by the 1st respondent with the permission of the 2nd respondent.

The learned counsel for the petitioner relied upon the Judgment in ***Thegalapalli Achamma Seva Sadan Vs. A.P.S.W.R.E.I Society*** to impress upon the Court that the decision of keeping the petitioner under suspension is arbitrary. He also relied upon the judgment of the Supreme Court in ***Madhya Pradesh Special Police Establishment Vs.State of M.P*** to show that the administrative power exercised by it will stand vitiated if there is manifest error of record or exercise of power is arbitrary. He also relied upon another Judgment of the Supreme Court in ***State of A.P Vs. P.V.Hanumantha Rao*** and drawn the attention of the Court to para 30 of the judgment to impress upon the Court that there was error in the decision making process as to suspension of the petitioner.

I am of the considered opinion that neither there was any arbitrariness based upon the irrelevant consideration nor there was any manifest error of jurisdiction or there was any error in decision making process while suspending the petitioner. Therefore, the decisions cited supra are not applicable to the facts of the case.

For all the above, Writ Petition is devoid of merit and it is liable to be dismissed and accordingly it is dismissed. No costs.

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14th July, 2005

grk

Note: CC in three days

B/o grk

To

1. The Vice Chairman and Managing Director Girijana Cooperation Limited, Visakhapatnam.
2. The A.P.S.R.T.C. rep by its Vice Chairman and Managing Director Musheerabad, Hyderabad.
3. 2 CCs to SC for APSRTC (OUT)
4. 2 CD copies
5. 1 CC to MR.KUNA NARASIMHA RAO